

15-07-41467

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

DLJ Mortgage Capital, Inc,

Plaintiff,

v.

Pedro F. Pou Rodríguez a/k/a
Pedro Federico Pou Rodríguez,
Gianna Méndez Zamora and the
conjugal partnership
constituted among them

Defendants.

CIVIL NO:

RE: Collection of Money and
Mortgage Foreclosure

COMPLAINT

TO THE HONORABLE COURT:

COMES now, **DLJ Mortgage Capital, Inc**, hereinafter referred to as "**DLJ**", by the undersigned attorney, and very respectfully states, alleges and prays:

I Parties

1. DLJ is a corporation with its principal place of business in 11 Madison Avenue, 4th Floor, New York, NY 10010-3629 and its telephone number is 212-325-0180.
2. Select Portfolio Servicing, Inc. is the servicer for DLJ with its principal place of business in 3815 South West Temple, Salt Lake City, UT 84115 and its telephone number is 800-772-1595 and 888-818-6032.
3. Pedro F. Pou Rodríguez a/k/a Pedro Federico Pou Rodríguez, Gianna Méndez Zamora and the conjugal partnership constituted among them hereinafter will be referred to as "the defendants

or the mortgagors”.

4. Defendants’ last known address is located in San Juan, Puerto Rico.

II Jurisdiction and Venue

5. This Honorable Court has jurisdiction over the instant case pursuant to the provisions of 28 U.S.C. § 1332 (a) (1) because the amount claimed, exclusive of interests and costs, exceeds \$75,000.00 and the parties are citizens of different States.
6. Venue is proper pursuant to 28 U.S.C. 1391 (b) (1) because the mortgagors’ residence is in Puerto Rico.

II Allegations

7. On December 9, 2005, for value received, a mortgage note payable to Popular Mortgage Inc. or order was executed before Notary Public Héctor M. Lúgaro Figueroa, affidavit number 4223, hereinafter “**the note**”. The note in the principal sum of \$400,000.00 bears interests on the unpaid principal balance at the rate of 6.000% per annum until the debt is paid in full.
8. The principal and interests due under the note are payable in monthly installments.
9. The note provides for the payment of late charges in the amount of 5.000% of each and any monthly installment not received by the note holder within 15 days after the installment is due and for the payment of 10% of the original principal amount (\$40,000.00) to cover costs, expenses, and

attorney's fees in the event the holder of the Note is required to seek judicial collection.

10. A voluntary mortgage was constituted by deed number 752 executed before the notary public Héctor M. Lúgaro Figueroa on December 9, 2005, hereinafter "**the mortgage deed**" to secure the holder of the note the repayment of (a) the indebtedness evidenced by the note, (b) an amount of 10% of the original principal amount (\$40,000.00) of the note to cover costs, expenses and attorney's fees in the event of judicial collection, (c) an amount of 10% of the original principal amount (\$40,000.00) of the note to cover any advances made under the mortgage deed and, (d) an amount of 10% of the original principal amount of the note (\$40,000.00) to cover interests in addition to those secured by law.
11. The mortgage encumbers the below described property, hereinafter "**the property**".

URBANA: Solar No. 9 de la Manzana B-1 de la Urbanización Mansiones de Villanova, localizado en el Barrio Caimito de Río Piedras, Puerto Rico. Dicho solar tiene un área superficial de 981.63 metros cuadrados. En lindes por el Norte, en una distancia de 42.02 metros, con la Calle 'A'; por el Sur, en una distancia de 25.00 metros, con el solar No. 8; por el Este, en una distancia de 46.97 metros, con los solares Nos. 11, 12 y 13; y por el Oeste, en una distancia de 17.16 metros, con la Calle 'A'. El inmueble descrito contiene una casa de concreto diseñada para una familia. Aprobada la segregación del descrito solar por la Junta de Planificación mediante plano archivado en esta oficina con el No. 5119.

12. The property is identified with the number 11017 and is recorded at page number 279 of volume number 316 of Río Piedras Sur, in the Registry of Property of San Juan, Fourth Section.
13. The mortgage is recorded at page number 137 of volume number 697 of Río Piedras Sur, fifteenth entry in the Registry of Property of San Juan, inscription 15th.
14. In accordance with the Registry of Property the defendants are the owners of the property.
15. DLJ is the owner holder in due course of the note having acquired it for value received in the ordinary course of business.
16. It was expressly stipulated in the note and in the mortgage deed that default in the payment of the monthly installments or noncompliance with the covenants or agreements included in the note and/or the mortgage deed would authorize the holder of the note to declare due and payable the total amount of the indebtedness evidenced by the note, and proceed with the execution and/or foreclosure of the mortgage.
17. The last payment made by the defendants under the mortgage note was the payment due April 1, 2011. The defendants herein have failed to comply with the terms of the note and the mortgage deed and have breached their duty to pay the monthly installments due since April 1, 2011 and thereafter until the

present day.

18. DLJ has tried to collect the indebtedness evidenced by the mortgage note without avail thus the entire principal sum and accrued interests and expenses have become due and payable pursuant to the acceleration clause of the note and the mortgage deed.
19. After declaring all the indebtedness of the defendants due and payable, the defendants owe DLJ the principal sum of \$370,052.96 plus interest at a rate of 6.000% per annum since April 1, 2011. Such interests continue to accrue until the debt is paid in full. The defendant also owes DLJ late charges in the amount of 5.000% of each and any monthly installment not received by the note holder within 15 days after the installment was due. Such late charges continue to accrue until the debt is paid in full. The defendants also owe DLJ all advances made under the mortgage note including but not limited to insurance premiums, taxes and inspections as well as 10% of the original principal amount (\$40,000.00) to cover costs, expenses, and attorney's fees guaranteed under the mortgage obligation.
20. Plaintiff will present at the Registry of Property of San Juan, Fourth Section a notice of *lis pendens* over the property that is subject of the instant action.

WHEREFORE, in view of the above plaintiff hereby respectfully

requests that the remedy herein sought be granted and demands the entry of judgment as follows:

- a. That defendants pay DLJ the amounts claimed in paragraph 19 of this complaint;
- b. Or in default thereof that an Order and a Writ of Execution be issued so as to allow for all legal rights, title and interests which the defendants may have in the above described property and any building or improvement thereon be sold at a public auction and that the monies due to DLJ as alleged in the preceding paragraphs be paid out of the proceeds of the judicial sale;
- c. That the defendants be absolutely barred and foreclosed from all rights and equity redemption in and to said property;
- d. That if the proceeds of the judicial sale are insufficient to cover the amounts specified under paragraph (a) of this prayer, the defendants be adjudged to pay DLJ the total amount of money remaining unsatisfied and execution be issued forthwith against the defendants for the payment of the deficiencies against any of the properties of said defendants;
- e. That if the proceeds of the judicial sale exceed the sum of money to be paid to DLJ as aforesaid, any such excess be deposited with the Clerk of this Court subject to further

orders from the Court;

f. That once the property is auctioned and sold, the Clerk of this Court issue a writ addressed to the Registry of the Property ordering the cancellation of any junior liens recorded therein;

g. Order such further relief as in accordance with the law and equity may be just and proper.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico this January 20 day of 2016.

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